
HOUSE BILL No. 1256

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-9-7; IC 34-26-2.

Synopsis: Protective orders in real property disputes. Requires the division of state court administration to prescribe or approve a nonconfidential form to be used by a petitioner: (1) to describe the allegations on which a request for a protective order is based; and (2) if a petitioner is requesting that the court order the respondent to refrain from entering or damaging real property, to indicate whether the petitioner knows or believes that the petitioner and the respondent are disputing who owns, or has a lease or easement to use, the real property. Requires the clerk of the court to separate the nonconfidential form from the remainder of the petition and serve a copy of the form on the respondent. Allows a court to limit the scope of a protective order, if the court determines that the petition arises from a dispute involving ownership rights, leasehold rights, or easement rights concerning real property.

Effective: Upon passage; July 1, 2001.

Foley

January 9, 2001, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1256

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-2-9-7 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) Any information:

3 (1) in a confidential form or any part of a confidential form
4 prescribed or approved by the division of state court
5 administration that must be filed with an order; or

6 (2) otherwise acquired concerning a protected person, **except the**
7 **nonconfidential part of a petition for a protective order that**
8 **is prescribed or approved by the division of state court**
9 **administration under IC 34-26-2-2(2);**

10 is confidential and may not be divulged to any respondent or defendant.

11 (b) Information described in subsection (a) may only be used by:

- 12 (1) a court;
13 (2) a sheriff;
14 (3) another law enforcement agency;
15 (4) a prosecuting attorney; or
16 (5) a court clerk;

17 to comply with a law concerning the distribution of the information.

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SECTION 2. IC 34-26-2-2 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. The petition:

(1) must include the name of the petitioner and the name and address (if known) of the respondent;

(2) must include, **on a separate or detachable nonconfidential form prescribed or approved by the division of state court administration:**

(A) any allegation concerning the date or manner of specific acts or feared acts of abuse, harassment, or disruption of the peace of the petitioner or members of the petitioner's household or any allegations concerning specific damage to or the fear of damage to any property of the petitioner; **and**

(B) if the petitioner is requesting that the respondent refrain from entering or damaging real property, an indication of whether the petitioner knows or believes that the petitioner and the respondent are disputing who owns, or has a lease or easement to use, the real property;

(3) must include a request that, if the court grants the protective order, the court shall order the respondent:

(A) to refrain from abusing, harassing, or disturbing the peace of the petitioner, by either direct or indirect contact;

(B) to refrain from abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(C) to refrain from entering the property of the petitioner, jointly owned or leased property of the petitioner and respondent if the respondent is not the sole owner or lessee, or any other property as specifically described in the petition;

(D) to refrain from damaging any property of the petitioner;

(E) if the petitioner and respondent are married and if a proceeding for dissolution of marriage or legal separation is not pending:

(i) to be evicted from the dwelling of the petitioner if the respondent is not the sole owner or lessee of the petitioner's dwelling;

(ii) to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;

(iii) to pay child support to the custodian of any minor children of the parties alone or with the other party;

(iv) to pay maintenance to the other party; or

(v) to perform a combination of acts listed in items (i)

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through (iv);

(4) must be sworn to by the petitioner;

(5) must include a request that the court set a date for a protective order hearing under this chapter;

(6) must be accompanied by a confidential form concerning protective orders prescribed or approved by the division of state court administration; and

(7) may include a request that the court order counseling or other social services, including domestic violence education, for the petitioner, the respondent, or both.

SECTION 3. IC 34-26-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) The emergency protective order issued under section 5 of this chapter may direct the respondent to refrain from:

(1) abusing, harassing, or disturbing the peace of the petitioner by either direct or indirect contact;

(2) abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(3) entering the property of the petitioner or any other property as specifically described in the petition; or

(4) damaging any property of the petitioner.

(b) If the court determines on the face of the petition that the petition for a protective order arises out of a dispute over who owns, or has a lease or an easement to use, real property, the court may:

(1) issue an emergency protective order under subsection (a) without an order under subsection (a)(3); or

(2) deny the emergency protective order, if the likelihood of future abuse or harassment against a petitioner is insubstantial.

SECTION 4. IC 34-26-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) When a petition is filed, the clerk shall issue a summons to appear at a hearing to the respondent that:

(1) gives notice of the date, time, and place of the hearing; and

(2) informs the respondent that the respondent must appear before the court to answer the petition.

(b) The clerk shall serve the respondent with:

(1) the summons to appear; and

(2) a copy of the nonconfidential form submitted as part of the petition under section 2(2) of this chapter;

in accordance with Rule 4.1 of the Rules of Trial Procedure.

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(c) Before complying with subsection (b)(2), the clerk shall separate the nonconfidential form submitted under section 2(2) of this chapter from the remainder of the petition.

SECTION 5. IC 34-26-2-12, AS AMENDED BY P.L.14-2000, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. **(a)** A court shall set a date for a hearing concerning a petition described in section 2 of this chapter not more than thirty (30) days after the date the petition is filed with the court. At the hearing, if at least one (1) of the allegations described in the petition is proved by a preponderance of the evidence, the court:

(1) shall order the respondent:

(A) to refrain from abusing, harassing, or disturbing the peace of the petitioner, by either direct or indirect contact;

(B) to refrain from abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(C) to refrain from entering the property of the petitioner, jointly owned or leased property of the petitioner and the respondent if the respondent is not the sole owner or lessee, or any other property as specifically described in the petition;

(D) to refrain from damaging any property of the petitioner; and

(E) if the petitioner and respondent are married and if a proceeding for dissolution of marriage or legal separation is not pending:

(i) to be evicted from the dwelling of the petitioner if the respondent is not the sole owner or lessee of the petitioner's dwelling;

(ii) to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;

(iii) to pay child support to the custodian of any minor children of the parties alone or with the other party;

(iv) to pay maintenance to the other party; or

(v) to perform a combination of the acts described in items (i) through (iv);

(2) may order the respondent to refrain from possessing a firearm (as defined in IC 35-47-1-5) during a period not longer than the period that the respondent is under the protective order if the court finds by clear and convincing evidence that the respondent poses a significant threat of inflicting serious bodily injury to the petitioner or a member of the petitioner's household or family; and

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(3) may order counseling or other social services, including domestic violence education, for the petitioner or the respondent, or both, and may order the respondent to pay the costs of obtaining counseling or other social services for the petitioner or the respondent, or both.

If the court prohibits the respondent from possessing a firearm under subdivision (2), the court shall notify the state police department of the restriction. The court may also order the confiscation under IC 35-47-3 of any firearms that the court finds the respondent to possess during the period that the protective order is in effect.

(b) If the court determines that the petition for a protective order arises out of a dispute over who owns, or has a lease or an easement to use, real property, the court may:

(1) issue a protective order under subsection (a) without an order under subsection (a)(1)(C) or (a)(1)(D), or both; or

(2) deny the petition for a protective order, if the likelihood of future abuse or harassment against a petitioner is insubstantial.

SECTION 6. [EFFECTIVE UPON PASSAGE] (a) IC 5-2-9-7, IC 34-26-2-2, IC 34-26-2-6, IC 34-26-2-11, and IC 34-26-2-12, all as amended by this act, apply only to petitions for issuance of a protective order filed with a court after June 30, 2001.

(b) The division of state court administration shall approve or prescribe the nonconfidential form required under IC 34-26-2-2(2), as amended by this act, before July 1, 2001. The form must be designed with a format that allows for the easy separation of confidential information concerning the petitioner from information that a respondent needs to prepare a defense to the allegations raised by the petition.

SECTION 7. An emergency is declared for this act.

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